

HOUSE No. 3325

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the North Shore Community College Assistance Corporation

□.

PETITION OF:

NAME:

Robert F. Fennell

DISTRICT/ADDRESS:

10th Essex

HOUSE No. 3325

By Mr. Fennell of Lynn, a petition (accompanied by bill, House, No. 3225) of Robert F. Fennell for legislation to establish the North Shore Community College Assistance Corporation. Higher Education.

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE

□ HOUSE
□ , NO. 1163 OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to the North Shore Community College Assistance Corporation

□.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. It is hereby found and declared that the North Shore Community College is
2 a critical element of the commonwealth’s higher education system and fulfilling the mission of
3 North Shore Community College to provide educational resources to the citizens of the
4 commonwealth is essential to providing students with skills and opportunities necessary to a full
5 and productive life. It is further declared that providing physical and financial resources
6 necessary to meet the needs of the North Shore Community College now and in the future is
7 critical to the ability of North Shore Community College to fulfill its mission including providing
8 the workforce with skills necessary to allow for the maintenance and expansion of the business,
9 industrial, technological and manufacturing sectors of the commonwealth’s economy. It is
10 further found and declared that creation of a nonprofit assistance corporation with certain
11 statutory authority will provide a vehicle with the necessary flexibility to prudently pursue
12 opportunities for the benefit of North Shore Community College, its present and future students
13 and the commonwealth. It is therefore expressly declared that the provisions of this act
14 constitute a needed program in the public interest in furtherance of an essential governmental
15 function and serve a necessary and valid public purpose for which public money may be
16 expended or invested.

17 SECTION 2. As used in this act the following terms shall, unless otherwise required,
18 have the following meanings:

19 “Board of directors”, the board of directors of the North Shore Community Assistance
20 Corporation created by this act;

21 “Board of higher education”, the board of higher education established pursuant to
22 section 4 of chapter 15A of the General Laws;

23 “Board of trustees”, the board of trustees of the North Shore Community College;

24 “College”, the North Shore Community College or, should the North Shore
25 Community College be dissolved or fail to qualify either as a political subdivision of the
26 commonwealth or an educational institution exempt from federal income tax under Section
27 501(c)(3) of the Code, then such other educational institution of higher learning established and
28 operating in the commonwealth as shall be designated by the board of higher education, which is
29 either such a political subdivision or such an exempt organization;

30 “Code”, the Internal Revenue Code of 1986, as the same may, from time to time, be
31 amended;

32 “Corporation”, the North Shore Community College Assistance Corporation created
33 by this act;

34 “Educational institution”, an educational organization within the meaning of section
35 170(b) (I)(A)(ii) of the Code.

36 SECTION 3. (a) There shall be a body politic and corporate to be known as the North
37 Shore Community College Assistance Corporation. The corporation is not and shall not be
38 deemed a public agency or state agency within the meaning of such terms in chapter 7 of the
39 General Laws for any purposes.

40 The corporation shall be governed by a board of directors consisting of the following
41 15 members: the chairman of the board of trustees of the college, the president of the college,
42 the mayor of the city of Lynn, the president of the Lynn City Council, the director of the Lynn
43 Economic Development Industrial Corporation, or successor thereto, 3 members appointed by
44 the governor, 1 member appointed by the Lynn Chamber of Commerce, or successor thereto, and
45 6 members appointed by the president of the college. Of the 3 members appointed by the
46 governor at least 1 shall be a person experienced in the financial aspects of real estate
47 development and management, and 1 shall be a person experienced in planning. Of the 6
48 members appointed by the president of the college, at least 2 shall be persons experienced in
49 higher education administration.

50 (b) The appointed members of the board of directors shall serve 3-year terms. Of
51 those initially appointed by the governor, 1 shall be appointed for 1 year, 1 for 2 years, and 1 for
52 3 years. Of those initially appointed by the president of the college, 2 shall be appointed for 1
53 year, 2 shall be appointed for 2 years, and 3 shall be appointed for 3 years. The individual
54 initially appointed by the Lynn Chamber of Commerce shall be appointed for 2 years. Vacancies
55 arising from other than the expiration of the term shall be filled by the party responsible for the
56 initial appointment. Directors shall serve without compensation but may be reimbursed for
57 expenses necessarily incurred in the performance of their duties.

58 (c) The board of directors from time to time shall elect from among themselves a
59 chairman, a vice chairman and a secretary. The secretary shall be the custodian of all books,
60 documents and papers of the corporation and its minute book and seal. Unless otherwise
61 provided in by-laws adopted by the board of directors, the number of directors required to
62 constitute a quorum shall be a majority of the directors then in office. If a quorum is present, a
63 majority of the directors may take any action on behalf of the board of directors except to the
64 extent that a larger number is required by this act, or other applicable laws or by-laws adopted by
65 the board of directors.

66 SECTION 4. The purposes of the corporation shall be to (i) promote the orderly growth
67 and development of the college; and (ii) to assist the college in securing physical and financial
68 resources necessary for the acquisition and development of sites for use by the college. In
69 furtherance of such purpose the corporation shall, subject only to the restrictions and limitations
70 hereinafter contained, have the following powers:

71 (a) to make and execute contracts and any other instruments necessary or convenient
72 for the exercise of its powers or the discharge of its duties and incur liabilities for any other
73 purposes of the corporation;

74 (b) to have a corporate seal which it may alter at its pleasure;

75 (c) to adopt by-laws for the regulation of its affairs;

76 (d) to accept, acquire, receive, take, and hold by bequest, devise, grant, gift, purchase,
77 exchange, lease, transfer, judicial order or decree or otherwise, for any of its objects and
78 purposes, any property both real and personal reasonably related to the acquisition and
79 development of sites for use by the college, and to develop such sites, including, but not limited
80 to, the construction, renovation, operation and maintenance of buildings thereon;

81 (e) to sue or be sued, provided, however, a director or officer of the corporation shall
82 not be liable for the performance of his duties if he acts in compliance with section 6C of chapter
83 180 of the General Laws;

84 (f) to sell, convey, mortgage, lease, transfer, exchange or otherwise dispose of any such
85 property, both real and personal, as the objects and purposes of the corporation may require;

86 (g) to borrow money, and from time to time, to make, accept, endorse, execute, and
87 issue promissory notes, bills of exchange, and other obligations of the corporation for monies
88 borrowed or in payment for property acquired or for any of the other purposes of the corporation,
89 and to secure the payment of any such obligation by mortgage, pledge, deed, agreement, or other
90 instrument of trust, or other lien upon, assignment of, or agreement in regard to all or any part of
91 the property rights or privileges of the corporation, whether now owned or hereafter to be
92 acquired;

93 (h) to receive stocks, bonds, donations, gifts and to otherwise raise money for the
94 corporation's purposes;

95 (i) to elect, appoint and employ officers, agents and employees; to fix their
96 compensation and define their duties and obligations and to indemnify corporate personnel;

97 (j) to enter into agreements for other transactions with any person, including, without
98 limitation, any governmental instrumentalities or agencies in connection with any of its powers
99 or duties and any governmental agency is hereby authorized to enter into such agreements or
100 transactions with the corporation; and

101 (k) to do all acts and things necessary or convenient to the exercise of any power or the
102 discharge of any duty provided for by this section.

103 SECTION 5. The corporation is hereby deemed to be an "institution for higher
104 education" solely for the purposes such term is used in chapter 614 of the acts of 1968. Any
105 acquisition of property by purchase, lease, or other method by the corporation shall be deemed a
106 "project" as such term is used in chapter 614 of the acts of 1968. The corporation shall be fully
107 eligible to receive any and all assistance from the Massachusetts Health and Education Facilities
108 Authority created by chapter 614 of the acts of 1968 in the same manner as any institution for
109 higher education.

110 SECTION 6. (a) The corporation shall assess the space needs of the college on a regular
111 basis and may acquire sites for use by the college. The corporation may lease or rent land or
112 space in any facility under the control of the corporation to any entities other than the college
113 only after making a determination that the college does not have a foreseeable need for such
114 space or land for the term of the lease or rental agreement.

115 (b) In no event shall the corporation sell, convey, transfer, exchange or otherwise
116 dispose of any real property without notifying in writing and consulting with the board of
117 trustees and the board of higher education, and after such consultation making a determination
118 that such sale, conveyance, transfer or exchange is in the best interests of the college. Any such

119 sale, conveyance, transfer or exchange shall require a vote of two-thirds of the members of the
120 board of directors.

121 SECTION 7. The college or any state agency or entity acting on the college's behalf,
122 may enter into an agreement to rent, lease or otherwise utilize any facility owned by, or under the
123 control of the corporation. The corporation shall be paid rent and costs for such facilities at a
124 rate agreed to by the corporation and college or state agency or entity entering into an agreement
125 on the college's behalf, provided that such amount may not exceed the fair market value for the
126 use of such facilities at the time the agreement is made. Subject to this limitation, the college's
127 determination to rent, lease or otherwise utilize any facility owned or under the control of the
128 corporation and any agreement related thereto shall not be subject to chapter 7 of the General
129 Laws.

130 SECTION 8. (a) The corporation shall not have the authority to engage in any activities
131 which are not in furtherance of its corporate purposes or to support or benefit any organization
132 other than the college, and all of the powers granted under this act to the corporation shall be
133 exercised in a manner consistent therewith.

134 (b) Notwithstanding any other provision herein contained, neither the directors and
135 officers of the corporation nor the corporation shall participate in any "prohibited transaction"
136 within the meaning of Section 503 of the Code, nor shall the corporation be operated at any time
137 for the primary purpose of carrying on a trade or business for profit.

138 SECTION 9. Subject to the other provisions of this act, the corporation shall use or
139 distribute all property from time to time held by the corporation solely in the furtherance of its
140 corporate purposes in such manner as the board of directors shall determine. No part of the
141 assets or net earnings, if any, of the corporation shall inure to the benefit of, or be distributable
142 to, its directors, its officers or any private individual, except that the corporation shall be
143 authorized and empowered to pay reasonable compensation for services rendered and to make
144 payments and distributions in furtherance of its corporate purposes. The corporation shall not
145 directly or indirectly participate in or intervene in, including the publishing or distributing of
146 statements, any political campaign on behalf of or in opposition to any candidate for public
147 office. No substantial part of the activities of the corporation shall be carrying on of propaganda,
148 or otherwise attempting to influence legislation, except to the extent the corporation makes
149 expenditures for purposes of influencing legislation in conformity with the requirements of
150 Section 501(h) of the Code. If the corporation is deemed to be a private foundation as defined in
151 Section 509 of the Code, the provisions of chapter 68 A of the General Laws shall apply to it.

152 SECTION 10. (a) The operation and maintenance of projects by the corporation shall
153 constitute the performance of an essential governmental function, and the corporation shall not
154 be required to pay any taxes or special, betterment or other assessments within the
155 commonwealth, including, without limitation, taxes on real or personal property and any ad

156 valorem taxes, upon any property owned, constructed, acquired, leased or used by it under the
157 provisions of this section. The corporation shall not be subject to any taxes based upon or
158 measured by income which may be enacted by the commonwealth. Obligations issued by the
159 corporation under this act, and any income derived therefrom, including any sale, exchange or
160 transfer of such obligation, shall at all times be free from taxation within the commonwealth.

161 (b) Land, buildings and tangible personal property of the corporation if leased to the
162 extent permitted under this act for any activity or transaction entered into by the lessee for
163 financial profit or gain, shall be taxed or assessed by the city or town in which such land,
164 buildings and tangible personal property may be situated to the lessees thereof respectively, in
165 the same manner as such land, buildings and tangible personal property would be taxed or
166 assessed to such lessees if they were owners thereof, except as follows:

167 (1) the payment of the tax or assessment shall not be enforced by any lien upon or sale
168 of such land or buildings, but for the purpose of enforcing the payment of such taxes or
169 assessments by such lessees to the city or town in which such land or buildings are situated, a
170 sale of the leasehold interest in therein may be made by the collection of the city or town in the
171 manner provided by law for selling real estate for the nonpayment of real estate taxes;

172 (2) such land, buildings and tangible personal property leased to any political
173 subdivision of the commonwealth or to any public charity described in section 8 of chapter 12 of
174 the General Laws for its charitable purposes shall not be taxed or assessed to any such lessees;

175 (3) that in lieu of taxes, and any betterment or special assessments, the city of Lynn
176 may determine a sum to be paid to it annually in any year or period or years, such sum to be in
177 any year equal to or less than the amount that would be levied at the then current tax rate upon
178 the then current assessed value of such real estate, including buildings and other structures, the
179 valuation for each year being reduced by all abatements thereon. In no event however, shall any
180 amount be due prior to the first year in which the corporation has leased some portion of the real
181 property to a third party and has received rental payments for fees in return therefore and any
182 amount so due shall be prorated based upon the percentage of the property for which rental
183 payments or fees have been received;

184 (4) if any such lessee is subject to the excise levied under the provisions of sections 30
185 to 42 B, inclusive, of chapter 63 of the General Laws, such tangible personal property shall be
186 treated as though it were owned by such lessee for the purposes of such excise, and it shall be
187 valued at eight times its annual rental rate, unless and to the extent that such property is treated
188 by the lessee as owned by it for federal income tax purposes, in which case its value shall be its
189 adjusted basis, as defined in the applicable provisions of the Code; and

190 (5) all tangible property, real or personal, so leased shall be considered tangible
191 property owned or rented and used in the commonwealth by such lessee for the purposes of
192 section 38 of chapter 63 of the General Laws.

193 SECTION 11. (a) The corporation shall not exercise any of the following powers, duties,
194 actions, responsibilities or authorities in the absence of review and comment by the inspector
195 general of the commonwealth, which review and comment shall be provided within 2 weeks of
196 submission by the corporation of a plan setting forth the power, duty, action, responsibility or
197 authority proposed to be taken:

198 (1) entering into a contract requiring an annual expenditure in excess of \$100,000 by the
199 corporation; provided, however, that the corporation is authorized to enter into those contracts
200 necessary to acquire sites, without further review by the inspector general, but pursuant to a
201 memorandum of understanding with the secretary of administration and finance with respect to
202 the acquisition, renovation, operation, and potential disposition of sites;

203 (2) borrowing monies such that the outstanding amount of monies borrowed by the
204 corporation exceed \$100,000;

205 (3) entering into a contract requiring the sale of any asset of the corporation purchased
206 with monies appropriated by the commonwealth; and

207 (4) entering into a contract requiring the sale of all or substantially all of the assets of
208 the corporation.

209 (b) The inspector general in carrying out the provisions of this act shall have access to
210 all the corporation's records, reports, audits, reviews, papers, books, documents,
211 recommendations, correspondence, including information relative to the purchase of services or
212 anticipated purchase of services from any contractor by the corporation, and any other data and
213 material that is maintained by or available to the corporation which in any way relates to the
214 programs and operations with respect to which the inspector general has duties and
215 responsibilities under this act, except records to which the provisions of section 18 of chapter 66
216 of the General Laws apply.

217 The inspector general may request such information, cooperation and assistance from
218 the corporation as may be necessary for carrying out his duties and responsibilities under this
219 act. Upon receipt of such request the person in charge of the corporation's governing body shall
220 furnish to the inspector general or his authorized agent or representative such information,
221 cooperation and assistance, including information relative to the purchase of services or
222 anticipated purchase of services from any contractor by the corporation except records to which
223 the provisions of said section 18 of said chapter 66 apply. He may make such investigation,
224 audits and reports relating to the administration of the programs and operations of the
225 corporation as are in the judgment of the inspector general necessary and may conduct an
226 examination of any documents of the corporation to prevent or detect fraud, waste and abuse in
227 the expenditure of public funds. The inspector general shall have direct and prompt access to the
228 head of the corporation when necessary for any purpose pertaining to the performance of his
229 duties and responsibilities under this act. He may request the production, on a voluntary basis, of

230 testimony or documents from any individual firm or non-governmental entity which relate to his
231 duties and responsibilities under this act.

232 (c) The inspector general may require by summons, the production of all records,
233 reports, audits, reviews, papers, books, documents, recommendations, correspondence and any
234 other data and material relevant to any matter under audit or investigation pursuant to the
235 provisions of this act, except records to which the provisions of said section 18 of said chapter 66
236 apply. Such summons shall be served in the same manner as a summons for the production of
237 documents in civil cases issued on behalf of the commonwealth, and all provisions of law
238 relative to said summons shall apply to a summons issued pursuant to this act. Any justice or the
239 superior court department in the trial court may, upon application by the inspector general, issue
240 an order to compel the production of records, reports, audits, reviews, papers, books, documents,
241 recommendations, correspondence and any other data and material as aforesaid. Any failure to
242 obey such order may be punished by said court as contempt. Any summons issued pursuant to
243 this act shall not be made public by the inspector general or any officer or employee of his
244 department, nor shall any documents provided pursuant to this act be made public until such time
245 as it is necessary for the inspector general to do so in the performance of his duties under this
246 act. The production of such books and papers pursuant to summons shall be governed by the
247 same provisions with reference to secrecy which govern proceedings of a grand jury. Disclosure
248 of such production, attendance and testimony may be made to such members of the staff of the
249 inspector general as is deemed necessary by the inspector general to assist him in the
250 performance of his duties and responsibilities under this act and such members of the staff may
251 be present at the production of records.

252 (d) The corporation shall submit annually an audited financial statement to the house
253 and senate committees on ways and means, and the joint committee on higher education.

254 SECTION 12. Upon dissolution of the corporation after payment of all of the liabilities
255 of the corporation or due provision therefore, all of the assets of the corporation shall be
256 distributed to the board of higher education, to be held in trust for the benefit and purposes of the
257 college, and shall not inure to the benefit of or be distributed to any private individual.

258 THE FOLLOWING TEXT WHICH CONTAINS THE MEMORANDUM OF THE
259 SECRETARY IS NOT PART OF THE TEXT OF THE BILL:

260 MEMORANDUM OF THE MASSACHUSETTS SECRETARY OF THE
261 COMMONWEALTH

262 IN RESPECT TO THE PETITION OF

263 ROBERT F. FENNELL

264 FOR LEGISLATION TO ESTABLISH THE

265 NORTH SHORE COMMUNITY COLLEGE ASSISTANCE CORPORATION

266 March 29, 2011

267 To the Honorable Senate and

268 House of Representatives:

269 On March 29, 2011 the Clerk of the House transmitted the above-referenced petition and
270 bill to me with a request for a memorandum pursuant to the provisions of General Laws Chapter
271 3 § 7.

272 The bill before you seeks to establish the North Shore Community College Assistance
273 Corporation, a non-profit corporation and a body corporate and politic. The purpose of the
274 corporation is to promote the orderly growth and development of the North Shore Community
275 College and to assist it in securing physical and financial resources necessary for the acquisition
276 and development of sites for use by the college.

277 The corporation is not to be considered a public agency or a state agency, though in
278 certain instances, it is subject to oversight by the Board of Higher Education and the Inspector
279 General. It is not subject to taxation within the Commonwealth. Upon dissolution of the
280 corporation, all of the assets of the corporation remaining after payment of all liabilities are to be
281 distributed to the Board of Higher Education.

282 Special legislation is necessary to create this corporation. This office has no opinion on
283 the merits of the bill. No fee is required to be paid the Commonwealth by a corporation of this
284 type.

285 Respectfully submitted,

286 William Francis Galvin

287 Secretary of the Commonwealth

288 WFG/lf